

**Final Rejection**

***Election/Restrictions***

Claims 20, 23-25 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species 2-4, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/05/2009. The structure recited in claims 20, 23-25 is not present in Specie I, previously elected by the applicant. Thus, claims 20, 23-25 are not treated on merits.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,4,7-11,15,16,19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Morton (US 7,621,273)

Referring to claim 1. Morton discloses a dispenser (204; Figure 31) for dispensing a substance in individual portions, the dispenser comprising:  
a body (200; Figure 31) having a dispensing orifice(216);

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a container (12) for the substance, the container being integral with or accommodated on the body (200, 40);

a mechanism (18,10) in the body and/or the container for dispensing individual portions of the substance to the dispensing orifice (216), the mechanism having:

a displaceable element (18) for initiating a dispensing action;

a multi-use counter (10) having a display incremented or decremented with the count of portions dispensed (372);

a dispense action detector (82) for detection of portion dispensing;

an accommodation in the body (200,40) for the multi-use counter with its detector (82) arranged for detection of dispensing actions of the mechanism; and

a closure (wrapper; Col. 11 line 43) adapted to co-operate with a portion of the body (200 and 40) providing the accommodation for removably enclosing the counter (10) in the accommodation, characterised in that the closure is provided with a frangible portion (wrapper) for release of the counter (10), such that the closure is tamper-evident (torn or removed wrapper).

Referring to claim 3. Morton discloses a dispenser (204; Figure 31) wherein the closure (wrapper) is adapted to be irremovably (until the wrapper is destroyed or removed) connected to the body (200; 40).

Referring to claim 4. Morton discloses a dispenser (204; Figure 31) wherein the removal of the frangible portion (portion of wrapper to be torn) enables removal of the closure (wrapper) and of the counter (10).

Referring to claim 7. Morton discloses a dispenser (204; Figure 31) wherein the closure (wrapper) is a cap over the end of the receptacle to captivate the counter (10).

Referring to claim 8. Morton discloses a dispenser (204; Figure 31) wherein the closure has a window (394; Figure 24) for viewing the display of the counter (10).

Referring to claim 9. Morton discloses a dispenser (204; Figure 31) wherein the closure (wrapper) provides an abutment (contact with the counter) for the counter (10) to maintain the said arrangement of the detector (82) only whilst the counter (10) is enclosed by the closure (wrapper).

Referring to claim 10,15. Morton discloses a dispenser (204; Figure 31) wherein the dispenser (204) is for dispensing a gaseous, gas borne or droplet substance (12) and

the dispensing orifice (216) is a mouthpiece with an inhalation/insufflation orifice at its end (see Figure 31);

the container (12) is a source of the substance accommodated on the body (200);

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the body (200) has a junction (210) for receiving the substance from the source (12);

the source and the junction are arranged to be movable towards each other (see movement Figure 31 and 32) for release of a substance dose from the source (12) to the junction (210);

the dispensing mechanism is a valve (18) provided in the source (12) and/or downstream thereof, for releasing the substance to the mouthpiece (216) a dose at a time (when actuated);

the displaceable member (18) is a spout (nozzle opening) on source (12), displaceable inwards of the source for release of the dose therethrough to the junction (210).

Referring to claim 11,16. Morton discloses a dispenser (204; Figure 31)

wherein:

the accommodation for the counter (10) is a receptacle (14) at the end of the source (12) remote from the spout (18);

the body (200) has a cylindrical sidewall extending to the region of the end of the source (see Figure 31); and

the end of the sidewall is adapted to co-operate with the closure (wrapper extends to the base member 200).

Referring to claim 19. Morton discloses a dispenser (204; Figure 31) wherein the source (12) is a metered dose source (see abstract).

Referring to claim 20. Morton discloses a dispenser (204; Figure 31) wherein an additional valve (opening in member 212) is provided down stream of the source (12).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morton (US 7,621,273) in view of Bacon (US2004/0069301 A1).

Referring to claims 23-25. Morton discloses all claimed limitations of claim 23 however Morton does not a acoustic transducer for detecting the dose released.

Bacon discloses a dispenser (1; Figure 1) for dispensing a substance in individual portions, comprising an acoustic transducer (11; Figure 1) for detecting dose release by a distinctive sound of the release.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Morton to have included the

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counter actuation mechanism as being a acoustic transducer to actuate the counting by the counter as taught by Bacon because an acoustic transducer would reduce the number of moveable parts of the dispenser thus extending the life of the dispenser.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

### ***Response to Arguments***

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. See new rejections above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571)272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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